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Type of paper transmitted: Letter Regarding Error in Patent Term Adjustment

Applicant's Name: Robert B. Belshe et al.

Serial No.: 09/785,764 Examiner: L. Scheiner

Filing Date: 02/16/2001 Art Unit: 1648 Confirmation No.: 2975

Application Title: TEMPERATURE-SENSITIVE AND COLD-ADAPTED HUMAN PARAINFLUENZA VIRUS TYPE 2 (HPIV-2) AND VACCINES BASED ON SUCH VIRUS

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Robert B. Belshe et al. Art Unit 1648  
Serial No. 09/785,764  
Filed February 16, 2001  
Confirmation No. 2975  
For TEMPERATURE-SENSITIVE AND COLD-ADAPTED HUMAN  
PARAINFLUENZA VIRUS TYPE 2 (HPIV-2) AND VACCINES BASED  
ON SUCH VIRUS  
Examiner: Laurie A. Scheiner

October 18, 2005

LETTER REGARDING ERROR IN PATENT TERM ADJUSTMENT

TO THE COMMISSIONER FOR PATENTS,

SIR:

Applicants received a copy of U.S. Patent No. 6,846,136 issued on September 20, 2005, in the above-identified application. The issued patent indicates a Patent Term Adjustment of nine-hundred ninety-three (993) days. Applicants hereby notify the Office pursuant to Comment 43 of the rules listed in Federal Register Vol. 65, No. 181 at page 56387 (Sept. 18, 2000) that the term adjustment is thought to be longer than appropriate. Applicants believe that the appropriate term adjustment is seven-hundred sixteen (716) days, as more fully discussed below.

On May 18, 2004, a Notice of Allowance and Fee(s) Due was mailed by the Office. The Notice of Allowance indicated a patent term adjustment of zero (0) days. On August 17, 2004, Applicants submitted a Request for Reconsideration of the Patent Term Adjustment Pursuant to 37 CFR §1.705, in which Applicants noted that the patent term adjustment should be equal to five-hundred sixty-one (561) days. Applicants also submitted at that time (August 17, 2004) payment of the Issue Fee, a 1.312 Amendment to

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amend the specification to properly clarify the continuity of the present application, and a Letter to the Patent and Trademark Office enclosing both a supplemental Application Data Sheet and a supplemental Declaration, each to also clarify the continuity of the application.

In response, on December 10, 2004, the Office mailed a Decision on the Request for Reconsideration of the Patent Term Adjustment, which indicated a patent term adjustment of five-hundred sixty-one (561) days as asserted in Applicants' Request dated August 17, 2004.

On August 31, 2005, an Issue Notification was mailed by the Office. The Issue Notification indicated a patent term adjustment of nine-hundred ninety-three (993) days. Five-hundred sixty-one (561) days of this adjustment is accounted for by the patent term adjustment that accrued from the time of filing the application until the mailing of the Notice of Allowance (as discussed above). Presumably, the remaining four-hundred thirty-two (432) days of patent term adjustment represents the Office's delay in issuing the patent. Applicants believe the patent term adjustment of nine-hundred nine-three (993) days to be in error, as the calculation of four-hundred thirty-two (432) days of patent term adjustment for delay in issuing a patent subsequent to the payment of the issue fee is incorrect.

Specifically, the Office issued the present patent on September 20, 2005, which is two-hundred seventy-seven (277) days after the end of the four (4) month period for issuance of a patent subsequent to payment of the Issue Fee. This two-hundred seventy-seven (277) day delay is offset by one-hundred twenty-two (122) days of delay on the part of applicants for submission of a paper after the

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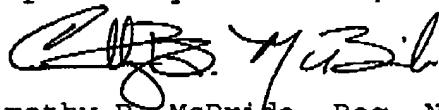
Notice of Allowance. Accordingly, Applicants are entitled to only one-hundred fifty-five (155) days of patent term adjustment for delay on the part of the Office in issuing the present patent.

Based upon the above-recited facts, the delay on the part of the Office was eight-hundred thirty-eight (838) days (five-hundred sixty-one (561) days of delay prior to the mailing of the Notice of Allowance and two-hundred seventy-seven (277) days of delay in issuing the patent). The delay on the part of Applicants was one-hundred twenty-two (122) days. The result is a patent term adjustment of seven-hundred sixteen (716) days.

Accordingly, it is believed that the patent term adjustment should be reduced from 993 days to 716 days.

Applicants believe that no fee is due for the filing of this letter. However, any underpayment may be charged to Deposit Account No. 19-1345.

Respectfully submitted,



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